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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 501

BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioner*,

v.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, ET AL., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the District of Columbia entered in this case on May 19, 1967, Court of Appeals No. 19,867.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is not reported; it is attached hereto as Appendix "A", *infra*. The judgment of the Court of Appeals is attached hereto as Appendix "B", *infra*. The opinion of the District Court is reported at 248 F. Supp. 1008; it is attached hereto as Appendix "C", *infra*. Question No. 33 and the Answer of Board 282 to this Question

are not reported; they are attached hereto as Appendix "D", *infra.*

JURISDICTION

The judgment of the Court of Appeals was entered May 19, 1967. This Court's jurisdiction is invoked under 28 U.S.C., Sec. 1254 (1).

QUESTION PRESENTED

Whether Public Law 88-108 permits Board 282 to authorize a railroad, simply because it denies there was a rule in effect within the meaning of Award 282, to reduce the number of trainmen in crew consist before Board 282 or any other impartial tribunal passes on the validity of such denial.

STATUTE INVOLVED

Public Law 88-108, 77 Stat. 132, 45 U.S.C. 157 (1966 Supp.) is set forth in Appendix "E", *infra.*

STATEMENT

In Public Law 88-108, Congress required the railroads and railroad unions to submit their dispute over the proper manning of trains to compulsory arbitration. The manning dispute concerned "firemen on diesels" and "crew consist", i.e., the number of employees in road and yard service. It is only the latter issue that is here involved.

The arbitration board (Board 282) established by Public Law 88-108 filed its award (Award 282) on January 25, 1964[1]; the validity of the Award, as well as the constitutionality of Public Law 88-108, was up-

[1] The text of Award 282 is unofficially reported in 41 Lab. Arb. 673 (1963).

held in *Brotherhood of Locomotive Firemen & Enginemen* v. *Chicago, Burlington & Quincy R. Co.*, 225 F. Supp. 112 (1964), aff'd. 331 F. 2d 1020 (D.C. Cir. 1964), *cert. den.*, 377 U.S. 918 (1964).

The instant case, like the companion cases in which petitions for certiorari are being filed, arises from that portion of the Award 282 which deals with "crew consist". Board 282 concluded that this issue, unlike the "firemen issue", could not be resolved by a nationwide formula. It therefore provided a procedure which would enable either party seeking a change in the number of trainmen in a crew consist to invoke a local Special Board. Until the local Special Board ruled that the change was justified and would not endanger the safety of the remaining crewmen and traveling public, the established number of trainmen in the crew consist had to be maintained. Award 282, Part III, R. 5.

Despite this requirement, Respondent reduced crew consists on certain mainline freight and passenger trains and certain branch line freight trains from one conductor and two brakemen to one conductor and one brakeman without submitting these changes to a local Special Board. Respondent justified these reductions by pointing to its *own* assertion that there were no "rules" in effect, within the meaning of Award 282, which stipulated the number of trainmen on these runs. Petitioner disputed this assertion, and sought a ruling from Board 282 that the reduction violated Award 282. In its Answer to Question 33, Board 282 ruled, however, that Respondent's reduction could remain in effect until the National Railroad Adjustment Board decided whether or not there were such "rules" in effect.

REASONS FOR GRANTING THE WRIT

Disputes between carriers and railroads over manning trains are not new. As this Court stated in *Brotherhood of Locomotive Engineers* v. *Chicago, Rock Island & Pacific R. Co.*, 382 U.S. 423 (1966) at 429:

> "Since the railroad unions first gained strength in this country the problem of manning trains has presented an issue of constant dispute between the railroads and the unions. . . ."

Rather than permit the railroad unions to strike over this issue in 1963, Congress enacted Public Law 88-108. Section 3 of that law empowered Board 282 to "resolve matters on which the parties were not in agreement" at that time, and to render an award that would constitute "a complete and final disposition of these issues" for a period limited to two years from the date of the Award. Ibid at 433. In short, Public Law 88-108 constituted an immediate response to a particular problem.

Recently, Congress has indicated that, wherever it appears that collective bargaining disputes in the railroad industry cannot be resolved without a strike, it will adopt *ad hoc* legislation compelling binding arbitration of the underlying disputes (See, Public Law Disputes Act, Public Law 90-54, July 17, 1967).

Therefore, although Public Law 88-108 has expired, the instant case, which involves one facet of the conduct of Board 282, has an importance transcending the immediate issues and parties. The use of *ad hoc* compulsory arbitration statutes to solve collective bargaining disputes presents unique and critical legal questions. Equally important, of course, is the impact that the functioning and conduct of Board 282 and

the local Special Boards it created has had upon the safety of the railway employees and the public as well as upon the rights of the parties here.

The companion cases challenge the conduct of the local Special Boards on the ground that they acted outside the limitations placed upon their authority by Public Law 88-108. The challenge here is that Board 282 in its Answer to Question 33 failed to fulfill duties Congress imposed upon it.

It failed to fulfill these duties because this Answer to Question 33 interpreted its Award to permit Respondent to reduce crews without regard to the impact that such reductions would have upon the safety of the remaining trainmen and the traveling public. It permitted this simply because Respondent asserted that there was no "rule" established "by agreement, interpretation, or practice", as those terms are used in Award 282, in effect at the time Award 282 became effective. By sanctioning such reductions on the basis of unverified assertion by this answer, Board 282 abdicated its responsibility to give "due consideration to the effect of the proposed award upon adequate and safe transportation service." Public Law 88-108, Section 7, App. "E", *infra*. Obviously, Congress did not intend the safety of trainmen and the traveling public to depend upon unverified assertions of the railroads any more than it intended the minimum number of trainmen to depend upon unverified assertions of railroad unions. Otherwise, there would have been no need to establish an impartial tribunal to sift their competing claims.

Nor did Congress intend Board 282 to shift the responsibility to interpret its own Award to the National

Railroad Adjustment Board. Nevertheless, this is precisely what it did when it required the Petitioner to submit the question whether there existed a rule established by "agreement", "interpretation", or "practice", within the meaning of Award 282, to the National Railroad Adjustment Board. Congress could not have intended this delegation of responsibility because the First Division of the National Railroad Adjustment Board (the division to which these disputes had to be submitted) had, at the time Public Law 88-108 was enacted, "a backlog of approximately 7½ years work". H. R. Rep. No. 1114, 89th Cong., 1st Sess., a 3-5; S. Rep. No. 1201, p. 2. By the time the First Division could decide this question (unless Respondent agreed to expedite the determination) Board 282 and the Special Boards it created would have gone out of existence. And, Congress, of course, could not have anticipated that the railroads would agree to expedite such a determination.[2]

Congress also could not have intended this delegation of responsibility because it commanded Board 282, not the National Railroad Adjustment Board, to resolve all disputes over the crew consist issue. Obviously, to do this, Board 282 or a local Special Board had to first decide whether there was a rule stipulating the number of trainmen in order to decide whether that number should be reduced.

In short, by its Answer to Question 33, Board 282 failed (1) to give due regard to the safety of the trainmen or the traveling public; (2) to resolve the dispute between the parties over the meaning of its

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[2] Board 282 apparently considered it significant that Respondent asserted it was willing "to expedite the determination of this issue of fact in the present case". App. "D".

Award; or (3) to resolve the underlying manning dispute between the parties. None of these results can be reconciled with Public Law 88-108.

Thus, this case raises a novel question which the Court has never passed on: the extent to which a compulsory arbitration board must affirmatively carry out the duties which Congress has entrusted to it. Unless this Court answers this question, confusion on the part of future compulsory arbitration boards and the parties subject to them will continue to impair both the fairness and the effectiveness of compulsory arbitration as a method of resolving collective bargaining disputes.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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